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The Relationships between Governments and State Trading Enterprises and State Trading Activities

The following submission has been received on 25 September 1996, from the Permanent Mission of the United States, with a request that it be circulated to all Members.

OVERVIEW

1. The Uruguay Round Understanding on the Interpretation of Article XVII calls for the establishment of a Working Party to review the adequacy of the existing questionnaire on state trading and the coverage of state trading enterprises notified. One specific task of the Working Party identified in the Understanding is the development of an illustrative list showing the kinds of relationships between governments and enterprises and the types of activities engaged in by these enterprises.
2. The development of an illustrative list is important for improving the compliance with notification obligations. An illustrative list will provide additional guidance to members concerning the scope and activities of entities to be detailed in Article XVII notifications. Discussions in the Working Party during the development of an illustrative list also will help develop a better understanding of which types of relationships and activities are of particular interest with regard to trade.
3. This paper presents lists of relationships and types of activities that could be included on the illustrative list. Additionally, this paper proposes how this list can be used to increase the utility of the notifications: first by identifying the key elements in the relationships and activities that characterize state trading enterprises and second by distinguishing relationships and activities of particular interest from relationships and activities of less interest.

DEFINITION OF STATE TRADING ENTERPRISES

4. The Uruguay Round Understanding establishes the following working definition in paragraph 1 for state trading enterprises as follows:

“Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports.”

5. The key elements of this definition for the purposes of this paper are the terms “which have been granted exclusive or special rights or privileges” and “influence through their purchases or sales the level or direction of import or exports.” These elements establish that for an entity to be considered

a state trading enterprise it must satisfy two conditions: (1) have a special right or privilege and (2) influence the level or direction trade through purchases or sales.

6. Development of an illustrative list will help clarify these two conditions. A list of relationships between enterprises and governments would address the issue of “special rights or privileges,” and a list of activities would illustrate how activities of state trading enterprises might influence trade. Additionally, examining the lists of relationships and activities as a package may result in identifying relationships and activities that are particularly significant for trade.

RELATIONSHIPS BETWEEN GOVERNMENTS AND ENTERPRISES

7. Paragraph 101 of G/STR/2 identifies a number of relationships established between governments and enterprises that members had determined were state trading enterprises. This list can be augmented by including relationships identified in notifications submitted since 1995 to give a broader picture of the relationships that exist between state trading enterprises and governments (Annex 1). Annex 1 incorporates the information contained in paragraph 101 of G/STR/2.

8. As noted in G/STR/2, paragraph 101, an enterprise may be a branch of the government or an entity separate from the government which was established to carry out government-mandated policies or programs subject to legislated controls. Private enterprises to be included under the Article XVII definition also include those which are established for commercial purposes, but may be granted special authority from the government to engage in trade.

9. The existence of a special right is important because it shows where entities are making decisions in an environment of reduced or no competition. Additionally, the manner in which the right or privilege is conferred shows how a government can influence the decisions of the entity. The lack of competition and the presence of government influence may result in trade-related decisions being made for public policy reasons instead of commercial considerations. In general, the broader the authority conferred on the entity, the more its decisions will be insulated from competitive concerns. The closer the authority is related to trading activities, the greater the possibility it could be used to distort trade flows. The closer the relationship the entity has with the government, the greater the possibility its decision-making will be influenced by public policy instead of commercial considerations.

10. These relationships relate to section III.B of the state trading questionnaire, which requests information on the privilege enjoyed by state trading enterprises. This information is important because it allows members to determine if a special privilege exists and notification is required. For example, on the import side, an entity that has been designated to allocate shares of a tariff-rate quota receives a special right or privilege. Similarly, on the export side, an entity that has access to export channels not available to other entities meets this condition.

11. Some countries have identified entities that do not engage in trade themselves, but transfer their special right or privilege to entities that do engage in trade. For example, on the import side, an entity that has been assigned the responsibility of allocating shares of a tariff-rate quota may be identified as a state trading enterprise, or the entities that have been allocated the right to actually engage in the trade may be identified. Similarly, on the export side, an entity that has been assigned the responsibility to control export activities of several other entities, such as through setting prices or terms of sale, may be identified as the state trading enterprise or the entities that operate underneath the supervision and the authority of this special right or privilege may be identified. While countries have identified both types of entities, the entity of most interest to other Members for notification purposes is likely to be the entity with the policy-making role or the closest link to government, since it is most likely to distort trade. Additionally, such an entity is most likely to be able to provide the breadth of information required for the notification.

TYPES OF ACTIVITIES ENGAGED IN BY STATE TRADING ENTERPRISES

12. Paragraph 102 of G/STR/2 identifies a number of activities engaged in by state trading enterprises based on historic notifications. This list can be augmented by including activities identified in notifications submitted since 1995 to give a broader picture of the activities of state trading enterprises engage. Annex 2 contains the historic list of activities from G/STR/2 plus additional activities notified since 1995.

13. These activities can affect trade, as the entities are linked to government and may be influenced to engage in activities to address policy-making concerns rather than commercial considerations. These activities relate to section III.A of the state trading questionnaire, which requests information on the activities engaged in by state trading enterprises. Any entity that has a special right or privilege and engages in trade would provide details of its activities, drawing on the list provided in Annex 2.

14. Certain activities may be relatively innocuous in a trade context, such as the authority to distribute automatic licences or inspect product for quality inspection. Although such activities could have significant implications for trade if they are applied in a distorting manner or undertaken in conjunction with other activities in Annex 2, a detailed examination of certain “stand alone” activities may be better examined as part of the notification process of other WTO committees (e.g., licensing committee or TBT committee). In contrast, some activities could clearly have significant trade implications, such as engaging in trade, and would be subject to a more rigorous review in the Working Party on State Trading. (A similar procedure could apply to the relationships contained in Annex 1.)

RELATION TO NOTIFICATION FORMATS

15. Each of the illustrative lists represents a spectrum of involvement with trade, ranging from closely related to trade to potentially minimal impact on trade. Every entity that meets both criteria of the two step test established in the Understanding should be identified through the notification process (e.g., reporting on the name of the state trading enterprise, the products covered, the reason or purpose, and a summary overview of its operations) and fall under the disciplines of GATT Article XVII. However, detailed information (as envisioned under G/STR/W/30) may not be required regarding all entities. Distinguishing more relevant entities from less trade relevant entities could improve the notification process by focusing the attention and resources of the Working Party on entities that have a significant effect on international trade.

16. There are several possible ways to distinguish entities of particular interest for the notification process. One possibility is to differentiate entities based on the types of activities they engage in and relationships with the government. Under this approach the illustrative lists are divided into different categories. Distinctions could be established to differentiate the combinations of activities and relationships that are clearly of interest to the Working Party (and requiring a full notification) and those that are of less interest (requiring a reduced notification). For example, any special right combined with the activities of monopoly exporter or monopsony importer would fall into the category of full notification. Activities such as issuing licences and engaging in quality inspection would only require a full notification if the entity engages in certain other activities deemed to be of possible interest, and if the entity has discretionary authority to exclude trading activities or to promote domestic agricultural products. Alternatively, these entities could be required to notify only if another member makes a special request through the chair that the entity be subject to a full notification.

Annex 1 - Relationships Between Governments and State Trading Enterprises

Identified in G/STR/2

- Exclusive right to export or import one or more products
- Authority to trade in competition with private traders
- Authority to contract with exporters/importers
- Authority to issue export or import licences subject to enterprise-established guidelines or conditions
- Authority to subsidize exports
- Authority to stabilize domestic supply and demand situations and prices through domestic purchases, stock-holding or sales
- Authority to administer GATT market access commitments by controlling prices, quantities and distribution of imported products
- Authority to obtain government financing for domestic and trade operations, including payments to producers

Additional suggestions

- Designated to import an allocated quantity of product under a TRQ
- Government-designated exporter or recipient of a conditional export licence
- Authority to contract for transportation, storage, insurance or other export-related operations
- Authority to establish and enforce grades and standards, including sanitary and phytosanitary requirements
- Authority to sign long-term supply and import agreements with the governments of other nations
- Authority to establish subsidiaries in export markets
- Exclusive or special rights to process domestically-produced or imported commodities for domestic consumption or export

Annex 2 - Types of Activities Engaged in by State Trading Enterprises

Identified in G/STR/2

- Serves as sole exporter/importer of the product
- Contracts with private exporters/importers to handle all or part of the exports/imports
- Issues export/import licences to all applicants who apply (no quantity restrictions)
- Determines price and quantity of the product to be exported/imported
- Issues export or import licences based on predetermined export/import quantities
- Administers contractual obligations for exports to countries with import quotas
- Negotiates or administers long-term supply or import contracts
- Handles the procurement and shipping of commodities for food aid contracts
- Funds or conducts services related to exports, including shipping, handling, insurance
- Offers export credits or guarantees credit to importers
- Conducts export market development activities financed by producers through assessments and/or government grants, export levies
- Purchases or procures all or part of the commodity from producers in the domestic market and/or for export
- Establishes minimum producer prices, pooled prices, or other payment arrangements
- Establishes or controls prices or other delivery terms for producers
- Holds or disposes of emergency or other stocks or finances stockholding activities
- Establishes or controls grades and standards for products marketed in the domestic market

Additional suggestions

- Prices are determined by the enterprise according to commercial considerations, auction or simultaneous buy-sell pricing system
- Determines domestic sale prices based on import prices, management costs, domestic consumer prices, other economic conditions, through an auction system
- Issues export or import licences based on other conditions such as an industry product marketing strategy
- Administers import regime, including quotas, TRQs
- Issues import quota allocations or TRQs on a first-come, first served basis, an auction basis, historical basis, other criteria
- Collects over-quota tariffs
- Conducts import tenders
- Determines the level of mark-up on imported goods
- Maintains and enforces sanitary, phytosanitary and technical grades and standards for exported/imported products; inspects exports or imports to see that they meet the established standards
- Collects and disseminates information to exporters
- Controls and/or conducts marketing or distribution of processed products through subsidiaries or joint ventures in import markets
- Establishes or controls domestic wholesale or consumer prices
- Owns and/or operates processing facilities
- Provides credit, other financial assistance to producers for production inputs such as fertilizer or seed
- Assess producers for domestic and export promotion, research, information activities